

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
P O Box 50013
San Jose, CA 95150-0013

Telephone: (408) 354-4413
Facsimile: (408) 354-5513

Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

Kevin Moore

Debtor(s)

) Chapter 13
) Case No. 22-50511HLB

) SECOND AMENDED TRUSTEE'S OBJECTION
) TO CONFIRMATION WITH CERTIFICATE OF
) SERVICE

) Continued 341 Meeting Date: September 14, 2022 @
) 10:45AM

) Initial Confirmation Hearing Date: August 11, 2022
) Initial Confirmation Hearing Time: 9:55AM
) Place: Telephonic or Video Only

) Judge: Hannah L. Blumenstiel
)

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this Plan for the following reasons:

1. In order to assist the Trustee in determining whether the disposable income test in 11 U.S.C. §1325(b)(1)(B) and/or the feasibility test in 11 U.S.C. §1325(a)(6) is met, the Trustee requests that the Debtor(s) provide her with a copy of each federal and state income tax return and W-2 form required under applicable law with respect to each tax year of the Debtor's ending while the case is pending confirmation. The tax return shall be provided to her at the same time it is filed with the taxing authority.

- 1 2. 11 U.S.C. §1325(a)(4) of the Bankruptcy Code requires that the value of the property to be
2 distributed under the plan be equal to or greater than what would be paid if the estate were
3 liquidated under Chapter 7. According to the Debtor's schedules, there is excess equity
4 which exceeds the scheduled unsecured debt; therefore, a Chapter 7 Trustee could liquidate
5 the Debtor's property and pay creditors 100% of their claims, plus interest. *See In re*
6 *Beguelin*, 220 B.R. 94 (9th Cir. B.A.P. 1998). The Trustee requests that the Debtor amend
7 Section 3.14 of the plan to state that "Class 7 claimants will receive no less than 100%_of
8 their allowed claims through this plan." In addition, the Trustee requests that the Debtor
9 include a Nonstandard Provision under Section 7 to state: "Unsecured creditors shall
10 receive interest at the federal judgment interest rate in effect at the time the petition was
11 filed."
12
- 13 3. The plan is in violation of 11 U.S.C. §1325(a)(5). The Trustee is in receipt of a secured
14 proof of claim filed by American Honda Finance Corp. The Debtor has failed to provide
15 for the secured proof of claim filed by American Honda Finance Corp. on the plan.
16
- 17 4. The Debtor has incorrectly listed Persevere Lending, Ally Financial (listed twice) and
18 Chase Auto Finance under Section 3.08 Class 2(C). This section of the plan is for claims
19 that are being reduced to \$0. Pursuant to the information contained within the petition, it
20 appears that all of the above-mentioned creditors should be listed under Section 3.07 of the
21 plan. The Debtor lists arrears owed to creditors in Form 122C-2 as well as the filed proof
22 of claims filed.
23
- 24 5. Until the Debtor has properly listed creditors on the plan, the Trustee is unable to determine
25 whether the plan complies with 11 U.S.C. §1325(a)(6) or 11 U.S.C. §1322(d).
26
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- 1 6. The Trustee is unable to administer the plan. The Debtor has failed to provide the collateral
2 description for secured creditors Ally Financial (listed twice) and Chase Auto Finance
3 under Section 3.08 Class 2(C) of the plan.
4
- 5 7. Debtor is in violation of 11 U.S.C. §521(a)(1). The Attachment to Schedule I listing the
6 Debtor's business expenses has been omitted from the Petition. Debtor must file the
7 required Attachment to Schedule I.
8
- 9 8. The Trustee requests a copy of the balance sheet as of May 31, 2022 for the business known
10 as Moore Family California Vineyards.
11
- 12 9. Debtor is in violation of 11 U.S.C. §521(a)(1). Debtor lists his gross business income on
13 Line 2 of Schedule I and has failed to list his average monthly business expenses on an
14 Attachment to Schedule I. The appropriate way to disclose Debtor's ongoing business
15 income and expenses is to list the net monthly income on Line 8a of Schedule I and include
16 the Attachment to Schedule I that itemizes all business expenses. Debtor must amend
17 Schedule I to list net business income. A separate objection point has been filed to address
18 the Debtor's failure to file an Attachment to Schedule I.
19
- 20 10. The plan is in violation of 11 U.S.C. §1325(a)(6). Pursuant to the information contained
21 on Schedules I and J, there is a deficit in the Debtor's monthly budget of \$13,430.00. It
22 does not appear that the Debtor's plan is feasible.
23
- 24 11. In order to perform her duties under 11 U.S.C. §1302(c) (incorporating duties under 11
25 U.S.C. §1106(a)(3)), the Trustee requests the Debtor provide a profit and loss statement
26 for the Debtor's business for the six months prior to filing.
27
28

1 12. Debtors are not in compliance with 11 U.S.C. §521(a)(1)(B)(iii). Debtor failed to list his
2 year to date gross yearly income as well as his gross yearly income for the two years
3 immediately preceding the filing of the petition under prior on Question 4 of the Statement
4 of Financial Affairs.

5
6 13. The Trustee is unable to determine whether the plan complies with 11 U.S.C. §1325(a)(4).
7 The Debtor has failed to list his business as an asset on Schedule A/B.

8
9 14. The Trustee is unable to determine if the Plan is in compliance with 11 U.S.C. §1325(a)(4).
10 Schedule A/B lists Debtor's 2018 Cadillac Escalade with a value of \$0.00. In order to
11 verify said value, the Debtor must provide the Trustee with a declaration, signed under
12 penalty of perjury, which provides the following information: the approximate mileage,
13 trim and condition of the vehicle, along with any additional features of the vehicle.
14 Furthermore, the Debtor must attach written proof of how the value was determined (e.g.
15 copies of print-outs from internet sources).

16
17 15. The Trustee is unable to determine if the Plan is in compliance with 11 U.S.C. §1325(a)(4).
18 Schedule A/B lists Debtor's Ford Truck with a value of \$0.00. In order to verify said value,
19 the Debtor must provide the Trustee with a declaration, signed under penalty of perjury,
20 which provides the following information: the approximate mileage, trim and condition of
21 the vehicle, along with any additional features of the vehicle. Furthermore, the Debtor must
22 attach written proof of how the value was determined (e.g. copies of print-outs from
23 internet sources). *NOTE: The Debtor has failed to specify the model of the Ford Truck on*
24 *Schedule A/B. This information must be provided on an Amended Schedule A/B.*

25
26 16. The Debtor failed to provide copies of income tax returns prior to the 11 U.S.C. §341
27 meeting of creditors. *See separate objection point.* So that the Trustee can verify that the
28 copies that the Debtor will provide are true and correct copies of the returns that were

1 provided to the taxing agencies, the Trustee requests that the returns provided to the Trustee
2 be attached to a declaration signed by the Debtor stating under penalty of perjury that the
3 returns being provided are true and correct copies of the returns that the Debtor submitted
4 to the taxing authorities.

5
6 17. The Debtor has failed to comply with 11 U.S.C. §521(e)(2)(A)(i) and (B), in that he has
7 not provided the Trustee with a copy of his 2021 federal and state income tax return and
8 W-2 form. Until the Debtor provides the requested information, the Trustee is unable to
9 perform her duties under 11 U.S.C. §1302(b)(1) (incorporating 11 U.S.C. §704(a)(4)) and
10 is unable to recommend confirmation.

11
12 18. The Trustee requests a copy of the 2021 tax return for the business known as Moore Family
13 California Vineyards.

14
15 19. In order to assist the Trustee in determining whether the disposable income test in 11 U.S.C.
16 §1325(b)(1)(B) and/or the feasibility test in 11 U.S.C. §1325(a)(6) is met, the Trustee
17 requests that the Debtor provide her with a copy of each federal and state income tax return
18 and W-2 form required under applicable law with respect to each tax year of the Debtor's
19 ending while the case is pending confirmation. The tax return shall be provided to her at
20 the same time it is filed with the taxing authority.

21
22 20. The Debtor is not in compliance with 11 U.S.C. §1308(a). Pursuant to the proof of claim
23 filed by the Internal Revenue Service, Debtor has not filed his 2016, 2017, 2018, 2019,
24 2020 and 2021 tax returns. The Trustee cannot recommend confirmation until the Debtor
25 provides proof that these tax returns have been filed.

26
27 21. The Trustee is unable to determine whether the plan complies with 11 U.S.C. §1325(a)(4)
28 until such time as the Debtor resolves the concerns outlined in the Trustee's Objection to
Claimed Exemptions.

1 22. The Debtor has not complied with the following provisions contained in General Order 34
2 of the United States Bankruptcy Court for the Northern District of California therefore the
3 plan cannot be confirmed:

- 4 a. The Debtor has failed to provide the Chapter 13 Trustee with Form NDC 1-3 Class
5 1 Checklist for each Class 1 creditor.
- 6 b. The Debtor has failed to provide the Chapter 13 Trustee with Form NDC 1-4
7 Authorization to Release Information to Trustee.
- 8 c. The Debtor has failed to provide the Chapter 13 Trustee with Form NDC 1-2
9 Domestic Support Obligation Checklist.
- 10 d. The Debtor has failed to file a declaration with supporting evidence stating whether
11 the Debtor has made all post-petition payments (“Declaration of Direct Payment”)
12 to the following Class 1 creditors: Persevere Lending. The Trustee requests that the
13 Debtor file the Declaration of Direct Payment five (5) days prior to all 1) continued
14 meetings of creditors and 2) contested or continued contested confirmation hearings
15 while the case is pending confirmation.

16

17 23. In order to meet the feasibility test of confirmation in 11 U.S.C. §1325(a)(6), the Trustee
18 requests that the Debtor(s) provide a declaration with sufficient proof to show that all
19 post-petition mortgage payments to Persevere Lending have been paid prior to
20 confirmation. If the Debtor has already provided the mortgage payment proof required
21 pursuant to General Order 24, that proof *need not be provided again*. However, for post-
22 petition mortgage payments that have come due after the conclusion of the meeting of
23 creditors, but before confirmation, the Trustee requests evidence to show that those
24 payments have been made before she can recommend confirmation.

25

26 24. The Debtor has failed to appear and/or submit to examination under oath at the meeting of
27 creditors under 11 U.S.C. §341(a). Without conducting this examination, the Trustee is
28 unable to adequately investigate the Debtor’s financial affairs as she is required to do

1 pursuant to 11 U.S.C. §1302(b)(1) (incorporating 11 U.S.C. §704(a)(4)). In addition, until
2 the Debtor is examined by the Trustee, she is unable to recommend confirmation of the
3 Debtor's plan. The Trustee requests that the Debtor appear at a rescheduled meeting of
4 creditors.

5
6 25. The Debtor has failed to provide the Trustee with either or both 1) a government-issued
7 photo identification, or 2) proof of a social security number. *See* 11 U.S.C. §521(h).
8 Without being able to establish the identity of the Debtor, the Trustee is unable to
9 adequately investigate the financial affairs of the Debtor or recommend confirmation. The
10 Trustee requests that the Debtor provide her with verification of both identity and social
11 security number.

12
13 26. The plan is in violation of 11 U.S.C. §1325(a)(5). The Trustee is in receipt of a secured
14 proof of claim filed by secured creditor Kubota Credit Corporation. The Debtor has failed
15 to provide for the secured claim of Kubota Credit Corporation on the plan.

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19 Dated: August 18, 2022

/S/ Devin Derham-Burk

20 _____
Chapter 13 Trustee
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1 **CERTIFICATE OF SERVICE BY MAIL**

2

3 I declare that I am over the age of 18 years, not a party to the within case; my business

4 address is 105 Cooper Court, Los Gatos, California 95032. I served a copy of the within Trustee's

5 Objection to Confirmation by placing same in an envelope in the U.S. Mail at Los Gatos, California

6 on August 18, 2022.

7 Said envelopes were addressed as follows:

8

9 Kevin Moore

10 12839 Airline Highway

11 Paicines, CA 95043

Saunders Law Group, Ltd.

1891 California Avenue #102

Corona, CA 92881

12

13

14 /S/ Lesley Pace

15 _____

16 Office of Devin Derham-Burk, Trustee

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